

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 249 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? yes
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
2 to 5 No.

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STATE OF GUJ

Versus

SALIMKHAN H PATHAN

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Appearance:

MR.D.N.PATEL, ADDL. PUBLIC PROSECUTOR for Petitioners  
M/S TRIVEDI & GUPTA for Respondent No. 1  
SERVED for Respondent No. 2, 3

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CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 18/01/97

ORAL JUDGEMENT

By this petition under Article 226 of the Constitution of India, the State of Gujarat has challenged the judgment and order dated 31.1.1991 passed by the learned Additional Sessions Judge, Bharuch in Criminal Appeal No.22/90. By the impugned order, the

learned Addl. Sessions Judge, Bharuch partly allowed the appeal of the respondents herein, substituting the order of confiscation of the tempo of the respondents and instead imposed fine of Rs.10,000/-.

The tempo bearing No.GRY 4191 belonging to the respondents was intercepted at about 4.30 p.m. on 1.2.1990 by the Forest Officers. On inquiry, it was found that there were 144 pieces of wood in the said vehicle. The driver and the cleaner, who were in the possession of the tempo, could not produce any pass or permit in respect of the wood lying in the tempo. The offence was, therefore, registered against the respondents under sections 26(1)(f) and 41(2)(b) of the Forest Act. The Deputy Conservator of Forests issued show cause notices to the respondents to show cause why the truck in which the wood was being transported illegally and unauthorisedly should not be confiscated to the State. The Deputy Conservator of Forests, after hearing the respondents, ordered to confiscate the vehicle, vide his judgment and order dated August 27,1990.

The respondents being aggrieved by the said judgment and order, preferred Criminal Appeal No.22/90 in the Sessions Court at Bharuch. The learned Additional Sessions Judge, Bharuch, who disposed of the said appeal by his judgment and order dated 31.1.1991, ordered to release the tempo by allowing the appeal partly and substituting the order of the Competent Authority of confiscation by imposing penalty of Rs.10,000/-. The learned Additional Sessions Judge, however, confirmed the order of the Competent Authority for auctioning the muddamal wood. It is against this order that the State of Gujarat has filed this petition.

I have heard Mr.D.N.Patel, learned Addl. Public Prosecutor, for the petitioner-State. In submission of Mr.Patel, the impugned order is unjust and illegal, as the order of fine could not have been imposed instead of confiscation of the vehicle. The learned Additional Sessions Judge, while allowing the appeal, has dealt with this aspect in para 13 of his judgment holding, inter alia, that the said tempo is means and source of income of the respondents. It was lying without any use with the Forest Department for last about one year since the said order under appeal came to be passed. The order passed by the learned Additional Sessions Judge is a

discretionary one. No case is made out to interfere with the impugned order warranting exercise of extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India. There is no merit in the petition.

In the result, the petition is dismissed. Rule discharged. Interim relief stands vacated.

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